An official website of the United States government Here's how you know

U.S. Department of Education

HOME / ABOUT US / OFFICES / LIST / OFFICE FOR CIVIL RIGHTS (OCR) / DOCS

# Fact Sheet: Providing Students with Disabilities Free Appropriate Public Education During the COVID-19 Pandemic and Addressing the Need for Compensatory Services Under Section 504

PDF (294.6K)

---

The U.S. Department of Education's (Department) Office for Civil Rights (OCR) issues this fact sheet to remind elementary and secondary public schools of their obligations under Section 504 of the Rehabilitation Act of 1973 to provide appropriate evaluations and services to students with disabilities during the COVID-19 pandemic, including schools' responsibility to provide compensatory services.

**Background: Section 504 of the Rehabilitation Act**

Section 504 is a Federal law that prohibits disability discrimination and guarantees that students with disabilities have equal access to educational opportunities, including a free appropriate public education (FAPE) in public elementary and secondary schools.1 FAPE under Section 504 is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of non-disabled students are met.2

**Students with Disabilities Retain Their Right to FAPE During the COVID-19 Pandemic**

Although the COVID-19 pandemic has created unique challenges for schools, students, and parents, the responsibility for schools to comply with Section 504 continues

regardless of how schools provide education: virtually, in-person, or with a hybrid learning model. In ensuring eligible students with disabilities receive FAPE under Section 504, schools must make decisions that consider students' health, safety, and well-being.3

When needed to ensure students with disabilities are receiving FAPE, schools must convene a group of persons knowledgeable about the student to make an individualized determination of whether a student's current services should be changed due to the effects of the COVID-19 pandemic, such as the impact of loss of services on skills, mental health and trauma concerns, or the physical health effects of long COVID (post-COVID conditions).4 Regardless of the challenges schools face during the pandemic, students with disabilities retain their right to FAPE under Section 504.

**Students with Disabilities May Be Entitled to Compensatory Services if They Did Not Receive Appropriate Evaluations or Services During the COVID-19 Pandemic**

If a student with a disability did not receive appropriate evaluations or services, including the services that the school had previously determined they were entitled to, then the school must convene a group of persons knowledgeable about the student to make an individualized determination whether, and to what extent, compensatory services are required.5 Unlike the FAPE inquiry, which requires the group to determine appropriate services going forward, the compensatory services inquiry requires looking backwards to determine the educational and other benefits that likely would have accrued from services the student should have received in the first place.6

Compensatory services are required to remedy any educational or other deficits that result from the student with a disability not receiving the evaluations or services to which they were entitled.7 For example, a school may need to provide compensatory services for a student who did not receive physical therapy during school closures or for a student who did not receive a timely evaluation. Providing compensatory services to a student does not draw into question a school's good faith efforts during these difficult circumstances. It is a remedy that recognizes the reality that students experience injury when they do not receive appropriate and timely initial evaluations,

re-evaluations, or services, including the services that the school had previously determined they were entitled to, regardless of the reason.

In general, the individualized determinations of whether, and to what extent, compensatory services are required must be made by a group of persons knowledgeable about the student, including for example, school nurses, teachers, counselors, psychologists, school administrators, social workers, doctors and/or family members.8 The following factors may be relevant for the group of knowledgeable persons to consider in determining the appropriate type and amount of compensatory services:

- the frequency and duration of missed instruction and related services;
- whether special education and/or related services that were provided during the pandemic were appropriate based on the student's individual needs;
- a student's present level of performance;
- previous rates of progress;
- the results of updated evaluations;
- whether evaluations were delayed; and
- any other relevant information.9

Ideally, the team of knowledgeable persons will come to a mutually acceptable decision regarding compensatory services to mitigate the impact of the COVID-19 pandemic on the child's receipt of services.

Under Section 504, if a parent or guardian believes that their child has not received or is not receiving FAPE, does not have equal access to other services provided by the school, or did not receive or is not receiving appropriate compensatory services, they may seek a hearing under the school's Section 504 due process procedures10 or file a complaint with OCR. A school's agreement to provide compensatory services is one way OCR remedies disability compliance issues when appropriate.

For information on how to file a complaint with OCR, please see https://www.ed.gov/laws-and-policy/civil-rights-laws/file-complaint/discrimination-form-us-department-of-education.

---

*1 29 U.S.C. § 794; 34 C.F.R. § 104.1 et seq. The information in this document regarding Section 504 applies to all elementary and secondary schools that receive Federal financial assistance from the Department, including public schools and school districts, public charter schools, and magnet schools. 34 C.F.R. § 104.3.*

*2 34 C.F.R. § 104.33. The Individuals with Disabilities Education Act (IDEA) is a Federal law that guarantees FAPE is available to all eligible children with disabilities residing in a State, with a few specific exceptions. The IDEA is administered by the Office of Special Education and Rehabilitative Services (OSERS). For more information about the IDEA's requirements to provide appropriate special education and related services to children with disabilities during the COVID-19 pandemic, including the school's responsibility to address compensatory services for the failure or inability to properly meet the needs of a child with a disability, see "Return to School Roadmap: Development and Implementation of Individualized Education Programs in the Least Restrictive Environment under the Individuals with Disabilities Education Act" at D-4 to D-7 (September 2021) https://sites.ed.gov/idea/files/rts-iep-09-30-2021.pdf.*

*3 For more information explaining the Section 504 regulatory requirements, see "Questions and Answers on Civil Rights and School Reopening in the COVID-19 Environment," Q-1 and Q-10 (May 2021) https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/qa-reopening-202105.pdf.*

*4 See 34 C.F.R. 104.35; cf., "Return to School Roadmap: Development and Implementation of Individualized Education Programs in the Least Restrictive Environment under the Individuals with Disabilities Education Act" at D-1 (September 2021) https://sites.ed.gov/idea/files/rts-iep-09-30-2021.pdf ("[I]t is critically important that the IEP Team also consider any adverse impacts of the COVID-19 pandemic on each child with a disability. This includes a discussion of whether the child may have new or different needs than had been determined prior to the pandemic."). "Long COVID" refers to a wide range of new, returning, or ongoing health problems people can experience more than four weeks after first being infected with the virus that causes COVID-19. See, "Long COVID under Section 504 and the IDEA: A Resource to Support Children, Students, Educators, Schools, Service Providers, and Families"*

*https://sites.ed.gov/idea/files/ocr-factsheet-504-20210726.pdf (July 2021) (detailing the potential health impacts of long COVID).*

*5 See 34 C.F.R. § 104.6(a); see also, id. §§ 104.33(b)(1), 104.35; "Return to School Roadmap: Development and Implementation of Individualized Education Programs in the Least Restrictive Environment under the Individuals with Disabilities Education Act" at D-4 (September 2021) https://sites.ed.gov/idea/files/rts-iep-09-30-2021.pdf.*

*6 See, e.g., Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 524 (D.C. Cir. 2005) (requiring compensatory education awards to "be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place").*

*7 See 34 C.F.R. § 104.6(a); Barnes v. Gorman, 536 U.S. 181, 189 (2002) (remedies available under Section 504 include injunctions and orders requiring a recipient to compensate a person with a disability "for the loss caused by th[e] failure" to comply with the law); "Addressing the Risk of COVID-19 in Schools while Protecting the Civil Rights of Students" at 3 (March 2020) https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/ocr-coronavirus-fact-sheet.pdf; "Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak" at A-3 (March 2020) https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf.*

*8 See, e.g., 34 C.F.R. § 104.35 (c) (explaining who should be included in interpreting evaluation data and in making placement decisions). Compensatory services can also be awarded by a hearing officer, court, or OCR.*

*9 For further discussion of the relevant legal requirements, see, e.g., "Return to School Roadmap: Development and Implementation of Individualized Education Programs in the Least Restrictive Environment under the Individuals with Disabilities Education Act" at D-5, D-6 (September 2021) https://sites.ed.gov/idea/files/rts-iep-09-30-2021.pdf (listing considerations for the delivery of compensatory services). These examples are not meant to be exhaustive and are provided to illustrate various situations that could require consideration of whether, and to what extent, compensatory services are*

*needed.*

*10 For discussion of these procedures, see "Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools" at 35 (December 2016) https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/504-resource-guide-201612.pdf; see also, 34 C.F.R. § 104.36.*

Top

**Office for Civil Rights (OCR)**

Page Last Reviewed: September 24, 2024

**Pay for College**

Fill out the FAFSA

529 Plans

Loan Forgiveness

1098 Tax Forms

**Educational Resources**

504 Plans

FERPA

IEPs (Individualized Education Program)

**Teaching Resources**

Become a Teacher

Professional Resources

School Safety and Security

Teaching Abroad

**File a Report**

Report Fraud, Waste, or Abuse

Report a Civil Rights Violation

Student Privacy Complaint Forms

**About Us**

Contact Us

ED Offices

Overview of ED

Frequently Asked Questions (FAQs)

Jobs at ED

**News**

Press Releases

Homeroom Blog

Subscriptions

**Site Notices and Privacy Policies**

Accessibility Support

**ED Archive**

U.S. Department of Education

ES

Contact Us
1-800-USA-LEARN

www.ed.gov

**An official website of the Department of Education**

About Dept of Education | Accessibility Support | No FEAR Act data

Office of the Inspector General | Performance reports | FOIA | Privacy Policy

ED Archive

Looking for U.S. government information and services? **Visit USA.gov**